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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ADRIAN RISKIN,	)	Case No. BS 166075
	)	
Petitioner,	)	(Judge Mary H. Strobel, Dept. 82)
	)	
vs.	)	PETITIONER'S SUPPLEMENTAL BRIEF
	)	IN SUPPORT OF PETITION FOR ORDER
HOLLYWOOD MEDIA DISTRICT	)	COMPELLING DISCLOSURE PURSUANT
PROPERTY OWNERS ASSOCIATION,	)	TO PUBLIC RECORDS REQUEST;
	)	DECLARATIONS OF COLLEEN FLYNN,
	)	ADRIAN RISKIN, AND DWIGHT D. COOK
Respondent.	)	
	)	Status Conference: 1/30/18
	)	Time: 9:30 a.m.
	)	Dept: 82

INTRODUCTION

Mr. Riskin filed this case to secure Respondent the Hollywood Media District Property Owners Association's ("Respondent") compliance with two requests under the California Public Records Act ("CPRA"). (AR 1-2.)¹

Respondent's initial search for and production of records responsive to these two requests was grossly inadequate, *i.e.*, the vast majority of documents produced were either duplicate files or outside the requested time frame. (Riskin Decl. to Petitioner's Brief in Support of Petition for Order Compelling Disclosure ("9/28/17 Riskin Decl."), ¶ 15-20.) Respondent has never contested that of the 1,553 emails it produced only 281 were responsive.

¹ The first request, dated December 8, 2015, asked for all emails to or from lisa@mediadistrict.org from her first day on the job to December 8, 2016. (AR 1.)

The second request, dated March 18, 2016, asked for all of Ms. Schechter's emails with anyone at the City, Laurie Goldman, or Kerry Morrison from December 9, 2016 to March 18, 2016. (AR 2.)

1 Before the status conference on April 11, 2017, the parties discussed the issues with the
2 initial search and production. Respondent agreed to do a subsequent search for responsive
3 documents. (AR 38.) Five months later, Respondent claimed to have conducted a new search but
4 found nothing to produce. (AR 65.) Respondent then produced a handful of documents it located
5 in hard copy in a file folder, which it later realized it had already given to Mr. Riskin in 2016.
6 (AR 38, 67; Briggs Decl. to Respondent's Report and Exemption Log; Declaration of Jeffrey
7 Briggs ("1/10/18 Briggs Decl."), ¶ 4.)

8 For the subsequent search to be meaningful, Respondent must either produce the
9 documents from the subsequent search or, at a minimum, compare them to all the documents
10 identified in the initial search and produce any it hadn't already provided.

11 At the hearing on November 28, 2017, Respondent's attorney admitted that Respondent
12 never compared the results of its initial search with the subsequent search. "So, I mean, you
13 know, I didn't go back and – did I do that comparison? I can't swear to you that I did."
14 (Reporter's Transcript of Proceedings, November 28, 2017 ("Trx.") at 6:7-13), excerpts attached
15 as **Exhibit A** to Flynn Decl. filed concurrently herewith, ("Flynn Decl.").

16 In fact, Respondent didn't even have a record of the documents it initially produced,
17 making such a comparison impossible. When asked by the Court, "Well, did you keep a record
18 of what was produced originally?," Mr. Briggs responded, "To be honest, I'm not sure we have
19 everything that was originally produced because I didn't go back and try to make that
20 comparison." (Trx. at 5:4-8.)

21 Respondent failed to both produce the documents retrieved in the subsequent search and
22 failed to conduct the comparison. This did not prevent Respondent from misrepresenting to the
23 Court before the hearing that there was nothing more to produce, implying it had conducted the
24 requisite search and review: "I recently completed yet another search, and found nothing on my
25 system other than what was previously provided." (Decl. of Lisa Schechter, ¶ 4, to Respondent's
26 Brief in Opp to Petition.)

27 Ms. Schechter did not say when she did the search, how many files she located, or how
28 she compared them to previously produced records. And she couldn't have since she hadn't done
so, and neither had Mr. Briggs.

When the Court heard that Respondent had not done its due diligence to ensure it had
produced all responsive records, it reversed its tentative and ordered Respondent to review all

1 files from its latest search and compare them to the files from the initial search. The Court
2 ordered Respondent to produce to Petitioner any non-exempt documents it did not previously
3 produce and to provide a declaration and log to Petitioner by January 11, 2018 regarding the
4 documents withheld and sufficient information for the Court to make a determination regarding
5 any claimed exemptions. (Trx. at 12:12-13:26.)

6 Because Mr. Briggs had informed the Court he did not know if he had the files from the
7 original search, Mr. Riskin's counsel offered to send them to him so he could do the comparison
8 as ordered by the Court. Mr. Briggs confirmed he would like the files from the original search
9 sent to him. Counsel for Mr. Riskin sent Mr. Briggs a link to a DropBox file with the documents
10 on Monday, December 4, 2017. (**Exhibit B** to Flynn Decl. ¶ 3.)

11 On January 11, 2018, Respondent served Respondent's Report and Exemption Log;
12 Declaration of Jeffrey Briggs. With a vague declaration, he stated there was nothing else to
13 produce.

14 Though Mr. Briggs' declaration failed to notify Mr. Riskin of how many files
15 Respondent located during the subsequent search, the results of the initial search and the
16 subsequent search must be different. Nevertheless, at the November 28, 2017 hearing, Mr.
17 Briggs told the Court that the subsequent search resulted in the same number of emails as the
18 initial search. "I know what was provided, and my client kept telling me these are the same files.
19 I did some comparison of the number of files produced. There wasn't any difference." (Trx. at
20 5:20-23.)

21 It is unlikely that the initial search and subsequent search would have resulted in the same
22 number of emails. And it is impossible that they would be the exact same files. As explained
23 more fully below, the search parameters from the initial search and subsequent search differed in
24 several key ways including timeframe and sender/recipient. Because the parameters for the
25 subsequent search were broader than for the initial search it is also highly likely that there are
26 additional, non-exempt responsive records to produce.

27 Mr. Briggs' declaration also included a log of documents Respondent claims are exempt
28 from disclosure. Although Respondent bears the burden of sustaining its exemptions, it has yet to
provide any legal analysis to justify its withholdings. Furthermore, of the 20 emails for which it
claims the deliberative process exemption, **Mr. Briggs previously produced 7 of them to Mr.
Riskin in 2016.** (2nd Supp. Riskin Decl. ¶ 12, filed concurrently herewith.)

1 It appears that Respondent has failed, again, to do a careful review and comparison of the
2 responsive documents. After receiving Mr. Brigg's most recent declaration, through counsel, Mr.
3 Riskin requested an index, or log, of the emails Respondent identified in its subsequent search so
4 that Mr. Riskin can conduct his own comparison. Mr. Briggs responded, refusing to provide the
5 requested log. (**Exhibit C** to Flynn Decl. ¶ 4.)

6 Mr. Riskin requests the Court order Respondent to 1) produce a log/index of documents
7 identified in the most recent search (date, time, sender, recipient, subject), 2) produce the
8 documents it claims are exempt (excluding those it previously produced), or 3) provide them to
9 the Court for *in camera* review.

10 ARGUMENT

11 **1. Respondent Must Produce a Log/Index of Emails Located During the** 12 **Subsequent Search**

13 A list of the withheld documents from Respondent's subsequent search would give
14 Petitioner a more "meaningful opportunity to contest" the withholding, *ACLU of N. Cal. v.*
15 *Superior Court* (2011) 202 Cal.App.4th 55, 83, as well as make the Court's job easier.

16 Respondent used different parameters for its initial search, conducted in 2016, than for its
17 subsequent search, conducted shortly before the November 28, 2017 hearing. Parameters differed
18 as to date range & sender/recipient.

19 The initial search had a *narrower* time frame. It should have spanned from Ms.
20 Schechter's first day on the job² to March 18, 2016. (AR 1-2.) The initial search, for Mr. Riskin's
21 3/18/16 request, was also *narrower* as to whom Ms. Schechter was emailing with (only anyone
22 at the City, Ms. Goldman, or Ms. Morrison). (AR 1-2, 81.) The initial search also resulted in a
23 vast number of duplicate files. (9/28/17 Riskin Decl. ¶ 15-20.)

24 The subsequent search had a *broad*er timeframe, from September 1, 2015 to June 1,
25 2016. The subsequent search was also *broad*er in that it included all Schechter emails, regardless
26 of the person she was emailing with. As Mr. Briggs stated in his September 27, 2017 email, the
27 criteria for the subsequent search was: "SEPTEMBER 1 2015-June 1, 2016, SCHECTER.") (AR
28 67.) Presumably, the subsequent search did not result in any duplicate files.

² Ms. Schechter has been Respondent's Executive Director since October 1, 2015. Decl. of Lisa Schechter,
¶ 1, to Respondent's Brief in Opp to Petition.

1 It is therefore unlikely that the initial search and subsequent search would have resulted
2 in the same number of emails. ***And it is impossible that they would be the exact same files.*** As
3 the subsequent search was different from and broader than the original search, it is also highly
4 unlikely that there are not additional, non-exempt responsive records to produce.

5 Respondent's initial search resulted in about 1,500 emails which it provided to Mr.
6 Riskin. As to the subsequent search, all it has provided is an exemptions log and a few hard
7 copies of emails from a file folder. Mr. Riskin has scant other information about Respondent's
8 subsequent search and any comparison to files produced in 2016. Considering the vagueness
9 around Respondent's searches and review process the production of an index/log would bring
10 more clarity and transparency to this case.

11 At the November 28, 2017 hearing, Respondent told the Court that the subsequent search
12 resulted in the same amount of emails. "I know what was provided, and my client kept telling me
13 these are the same files. I did some comparison of the number of files produced. There wasn't
14 any difference." (Trx at 5:20-23.)

15 Given that Respondent's position on the searches is not credible and given the Court's
16 earlier recognition that Respondent failed to conduct a reasonable search/comparison of the files
17 to ensure it had produced all non-exempt emails, Respondent should generate a log/index of the
18 results of the subsequent search so that Mr. Riskin can do his own comparison. Providing a list
19 of withheld documents is "consistent with the language and spirit of the Public Records Act."
20 *State Board of Equalization v. Superior Court* (2011) 10 Cal.App. 4th 1177, 1193.

21 Petitioner has made a good faith effort to obtain a log of the emails from the subsequent
22 search without the Court's intervention. Through counsel, on January 18, and again on January
23 22 and 23, 2018, Mr. Riskin requested an index, or log, of the emails Respondent identified in its
24 second search. On January 23, 2018, Petitioner sent an email refusing to provide the requested
25 log. (**Exhibit C** to Flynn Decl. ¶ 4.)

26 As the declaration of Programmer Analyst Dwight D. Cook, filed concurrently herewith,
27 explains, it would be easy to generate a list of Ms. Schechter's emails that fall within the
28 aforementioned date parameters. "Outlook³ will generate the list of emails that contain the search
criteria in a few seconds. Once the list is on the screen, the user can print the list onto paper

³ Ms. Schechter uses Microsoft Outlook for her email system. (4/5/17 Schechter Depo. 15:7.)

1 and/or save it to a file (including a PDF file). Outlook’s search and retrieval function is easy to
2 use, operates quickly, and will find all emails that match the search criteria.” (Cook Decl. ¶ 5-6.)

3 **2. Respondent Has Failed to Meet Its Burden as to Its Claimed Exemptions**

4 Respondent has identified 32 emails it claims are exempt from disclosure on the grounds
5 of attorney-client privilege, attorney work product, deliberative process privilege, drafts, and
6 personnel privacy. (1/10/18 Briggs Decl. ¶ 5-6.) Under the CPRA, if a record is a public record
7 then the presumption is it must be disclosed. Gov’t Code §§ 6253(a), 6256. If the agency objects
8 to disclosure, the agency carries the burden of proof to show that the requested records are
9 exempt from disclosure. Gov’t Code § 6255. Respondent has yet to do so.

10 **a. Deliberative Process Privilege**

11 Respondent is claiming the deliberative process privilege to justify withholding 20 of 32
12 emails. The deliberative process privilege is not a *per se* exemption under the CPRA, Gov’t
13 Code §6254 (k). The interest protected by the privilege—the ability to communicate candidly
14 about predecisional advice with, typically executive, agency decision-makers—does not
15 automatically exempt the documents. It may, however, be cited as supporting a public interest in
16 nondisclosure under the balancing test in Gov’t Code §6255. *Maryland v. Superior Court Office*
17 *of Statewide Health Planning and Development* (2000) 81 Cal.App.4th 1119, 1126. Respondent
18 has failed to provide the necessary analysis or to make any public interest justification for
19 withholding.

20 The public interest in disclosure, however, is indeed strong. The emails Respondent is
21 withholding pursuant to the deliberate process privilege relate to the kinds of developments to be
22 addressed or not by the BID, BID projects, open accounting issues, and meeting agendas.
(1/10/18 Briggs Decl. ¶ 6.) These are the exact type of issues the Los Angeles Municipal
23 Lobbying Ordinance, LAMC §48.01(B), (“MLO”), states is of the highest public interest:

- 24 1. City government functions to serve the needs of all citizens.
- 25 2. The citizens of the City of Los Angeles have a right to know the identity of interests which
26 attempt to influence decisions of City government, as well as the means employed by those
27 interests.
- 28 3. All persons engaged in compensated lobbying activities aimed at influencing decisions by
City government must, when so engaged, be subject to the same regulations, restrictions and
requirements, regardless of their background, training or other professional qualifications or
license.

1 4. Complete public disclosure of the full range of activities by and financing of lobbyists and
2 those who employ their services is essential to the maintenance of citizen confidence in the
3 integrity of local government.

4 5. It is in the public interest to ensure that lobbyists do not misrepresent facts, their positions, or
5 attempt to deceive officials through false communications, do not place City officials under
6 personal obligation to themselves or their clients, and do not represent that they can control the
7 actions of City officials.

8 6. It is in the public interest to adopt these amendments to the City's regulations of lobbyists to
9 ensure adequate and effective disclosure of information about efforts to lobby City government.

10 BID staff engages in compensated lobbying activities and is bound by the MLO.⁴ Thus
11 the citizens of Los Angeles have "a right to know ... the means employed" by them. The MLO
12 states very clearly that adequate and effective disclosure is in the public interest. The documents
13 Respondent is trying to hide contain exactly the type of information they should be disclosing.

14 Furthermore, of the 20 emails for which they claim the deliberative process exemption,
15 Mr. Briggs previously produced 7 of them to Mr. Riskin in 2016. (**Exhibit A** to 2nd Supp. Riskin
16 Decl. ¶ 12.) Even though Mr. Briggs declared, under penalty of perjury, that he "went through
17 each record retrieved from Respondent's searches and looked for it in the records provided by
18 Petitioner," he somehow missed that he had already produced 7 of the 20 emails he claims, in the
19 same declaration, are exempt from disclosure pursuant to the deliberative process privilege.
20 (1/10/18 Briggs Decl. ¶ 3.)

21 Clearly, Mr. Briggs still does not know what he produced to Mr. Riskin in 2016 and has
22 failed to do a careful review and comparison of the records. Furthermore, a cursory glance at
23 these emails shows that none of them qualify for withholding.

24 The "2/29/16 Goldman/Schechter/2 Board member email re new project construction
25 plans" is basically chit-chat about what tenants are in the BID. "Sassafras... sorry to see them
26 leave." (1/10/18 Briggs Decl. ¶ 6; **Exhibit A** to 2nd Supp. Riskin Decl.) There is nothing in this
27 email string that comes close to a deliberative process. Respondent has even withheld a public
28 hearing notice from the City attached to this email string. Yet what can be more of a public
record than a public hearing notice?

⁴ In 2007 the BIDs fought, unsuccessfully, to be exempt from the MLO. However, the Ethics Commission determined that "BIDs can-and often are required to--engage in advocacy on behalf of the business owners within their districts." "The public has as great an interest in knowing how BIDs are affecting government as they do in knowing how other corporations are. Therefore, the Commission recommends against a categorical exemption for BIDs." http://clkrep.lacity.org/onlinedocs/2007/07-3005-s2_rpt_eth_9-3-09.pdf [as of Jan. 24, 2018]

1 The “2/8/16 Goldman/Schechter email attaching draft Exec C’ee mtg agenda” has one
2 substantive line: “Please see attached...call me if you have any questions. I’d like to see the final
3 agenda before it is posted.” (1/10/18 Briggs Decl. ¶ 6; **Exhibit A** to 2nd Supp. Riskin Decl.)
4 There is no privileged communication in this email. However, the attached agenda does provide
5 some clue as to why Respondent would wish to keep it from public scrutiny. The draft agenda
6 states: “**(to discuss, but NOT TO INCLUDE ON THE AGENDA)** Code of Ethics/Document
7 Retention/Whistle Blower; Increase BID Boundaries; Assessment Increase.” (**Exhibit A** to 2nd
8 Supp. Riskin Decl.) (bold & highlighting in original). It appears Respondent is trying to hide a
9 Brown Act violation. Gov’t Code §54954.2(a)(3) states, “No action or discussion shall be
10 undertaken on any item not appearing on the posted agenda, except that members of a legislative
11 body or its staff may briefly respond to statements made or questions posed by persons
12 exercising their public testimony rights under Section 54954.3.”

13 BIDs are subject to both the CPRA and the Brown Act. Gov’t Code § 54952(c)(1);
14 *Epstein v. Hollywood Entertainment District II Business Improvement District* (2000) 85
15 Cal.App.4th 152 [Property Owners Association covered because it received money from taxes on
16 property and businesses within the Business Improvement District, and it was structured to
17 assume certain administrative functions ordinarily performed by the city].

18 By claiming the deliberate process exemption as to 7 documents it has already produced,
19 Respondent has shown it still does not know what it produced, it has failed again to do a careful
20 review and comparison of the documents as ordered by the Court, it lacks a meaningful
21 understanding of the exemption it’s claiming, and it’s trying to hide its violations of the law.

22 Respondent should be ordered to produce all documents it is withholding pursuant to the
23 deliberative process privilege or provide them to the Court for *in camera* review.

24 **b. Drafts**

25 Respondent is claiming the drafts exemption to justify withholding 10 of the 32 emails.
26 For all the emails that Respondent claims the draft exemption they also claim the deliberative
27 process exemption. Two of the ten emails fall into the category of emails Respondent claims are
28 exempt from disclosure even though it previously produced them in 2016.⁵

⁵ “2/8/16 Goldman/Schechter email attaching draft Exec C’ee mtg agenda” and “2/15/16
Goldman/Schechter email re Brown Act handling and language, and “staff” designation,” (1/10/18 Briggs Decl. ¶
6.)

1 Like the deliberate process privilege, the drafts exemption is not a *per se* exemption
2 under the CPRA. To qualify for the drafts exemption a record must be a preliminary draft, note,
3 or memorandum, that is not retained by the local agency in the ordinary course of business, and
4 the public interest in withholding the record must clearly outweigh the public interest in
5 disclosure. Gov't Code § 6254(a); *Citizens for a Better Environment v. Dep't of Food and*
6 *Agriculture* (1985) 171 Cal.App.3d 704, 711-712.

7 These emails do not qualify for the drafts exemption as they themselves are not a
8 preliminary draft, note, or memorandum. Both the emails and their attachments are retained in
9 the ordinary course of business, and the public interest in disclosure, as discussed above,
10 outweighs any interest in withholding.

11 Respondent should be ordered to produce all documents it is withholding pursuant to the
12 drafts exemption or provide them to the Court for *in camera* review.

13 **c. Personnel Privacy**

14 Respondent is claiming the personnel privacy exemption to justify withholding 2 of the
15 32 emails.⁶ The CPRA exempts from disclosure, “[p]ersonnel, medical, or similar files, the
16 disclosure of which would constitute an unwarranted invasion of personal privacy.” Gov’t Code
17 § 6254(c).

18 It appears that Respondent would be able to redact any exempt information from these
19 two emails. Respondent has a duty to provide the records in redacted form if nonexempt
20 information is “reasonably segregable” from the information that is exempt. Gov’t Code §
21 6253(a); *ACLU Foundation v. Deukmejian* 1982) 32 Ca.3d 440, 458. A home address, for
22 example, is easily redactable.

23 Respondent should be ordered to produce all documents it is withholding pursuant to the
24 personnel privacy exemption or provide them to the Court for *in camera* review.

25 //

26 //

27 ⁶ “2/15/16 vendor-service provider/Schechter/Goldman email concerning personnel issue and private
28 health information PERSONNEL PRIVACY AS TO HEALTH ISSUE/DELIBERATIVE PROCESS AS TO
HEALTH INCIDENT HANDLING AND VENDOR/SERVICE PROVIDER RELATIONSHIP HANDLING” and
“2/29/16 Goldman/Schechter email re check signing logistics with private address information PERSONNEL
PRIVACY AS TO PERSONAL NON-BUSINESS ADDRESS OF VOLUNTEER,” (1/10/18 Briggs Decl. ¶ 6.)

1 **d. Attorney-Client Privilege & Attorney Work Product**

2 Respondent is claiming the attorney-client and attorney work product privileges to justify
3 withholding 11 of the 32 emails. The CPRA exempts attorney-client privileged communications
4 and attorney work product.

5 However, it only exempts confidential communications. *Costco Wholesale Corp. v*
6 *Superior Court* (2009) 47 Cal.4th 725, 733. By including a vendor in an email with Ms.
7 Schechter, Respondent loses the confidentiality of the communication and therefore the
8 privilege/exemption.⁷

9 Although the Court ordered Respondent to provide sufficient information for the Court to
10 make a determination regarding its claimed exemptions, it has provided merely a chart with very
11 little information and utterly no analysis. Respondent has, therefore, failed to meet its burden to
12 justify withholding the emails it claims are exempt. Respondent should be ordered to produce all
13 documents it is withholding as exempt or provide them to the Court for *in camera* review.

14 **3. Mr. Briggs Has Been Emboldened to Violate the CPRA By This Litigation**

15 Initially, this litigation caused Mr. Briggs to be much more compliant with his clients'
16 CPRA statutory obligations. However, as this litigation has gone on and he's come to believe
17 that he can get away with violating the CPRA, he has been emboldened in his violations.

18 Mr. Riskin filed this petition for a writ of mandate against Respondent in November
19 2016. From November 2016 to the present he has made additional requests to Respondent for
20 records under the CPRA. (2nd Supp. Riskin Decl. ¶ 2.) All Mr. Riskin's CPRA requests to
21 Respondent have been handled by Mr. Briggs. *Id.* at ¶ 3. After this petition was filed in
22 November 2016 Mr. Briggs began to respond to Mr. Riskin's requests in a very expeditious
23 manner. *Id.* For instance, on December 19, 2016, Mr. Riskin sent Mr. Briggs a request for almost
24 a year's worth of emails between various staff and board members of Respondent. *Id.* By
25 December 27, 2016 he had almost completely fulfilled the request. *Id.* While it did take him
26 until February 17, 2017 to fulfill the request completely, he produced the vast majority of the
27 responsive records within ten days. *Id.*

28 On February 16, 2017, Mr. Riskin requested another set of emails and again Mr. Briggs
complied with a complete production within ten days. Between November 2016 and March

⁷ "11/6/15 Briggs/Schechter/vendor email re PRA request handling" (1/10/18 Briggs Decl. ¶ 5.)

1 2017, Mr. Briggs did not always arrange such prompt responses, *e.g.*, he sometimes took as long
2 as a month or six weeks to produce materials but he seemed to try to comply with his clients'
3 statutory obligations. *Id.* at ¶ 4.

4 However, the longer this case has gone on, the more untimely have Mr. Briggs's CPRA
5 responses for Respondent become. *Id.* at ¶ 5. By May 15, 2017, when Mr. Riskin made a request
6 for a few sets of emails and some other material, it took Mr. Briggs almost ten weeks to produce
7 responsive material. *Id.*

8 The most recent CPRA request Mr. Riskin made of Respondent was on November 13,
9 2017. *Id.* at 6. Neither Mr. Briggs nor anyone else from Respondent has even bothered to
10 respond to this request. *Id.*

11 Respondent is not the only Los Angeles area BID for which Mr. Briggs handles CPRA
12 requests. *Id.* at 7. His work for the other BIDs that employ him has followed the same pattern of
13 scrupulous compliance with statutory obligations for requests sent soon after November 2016
14 and then sharply degrading compliance ever since. *Id.*

15 Mr. Riskin regularly makes CPRA requests of Mr. Briggs' client the East Hollywood
16 BID ("EHBID") for emails in native email format. *Id.* at ¶ 8. Until the summer of 2017 Mr.
17 Briggs not only supplied responsive records promptly but always in the requested format. *Id.*
18 However, as with the Media District, he no longer complies promptly or correctly. *Id.* For
19 instance, on August 11, 2017, Mr. Riskin asked for a set of emails in native format. *Id.* On
20 October 18, 2017 he produced roughly 50 emails in PDF format. *Id.* When Mr. Riskin asked him
21 to produce them in EML format as he had always done in the past he ignored the request. *Id.*
22 Furthermore, he claimed that some responsive emails were exempt under a claim of deliberative
23 process. When Mr. Riskin asked him recently to expand on that, he ignored the request (and
24 continued to ignore the request for the emails in EML format). *Id.*

25 Mr. Riskin regularly make CPRA requests of Mr. Briggs' client the Historic Core BID
26 ("HCBID"). *Id.* at ¶ 9. In February 2017 Mr. Riskin made two requests ("February requests")
27 and in June 2017 made another request ("June request"). *Id.* (Mr. Briggs did not represent the
28 HCBID at the time Mr. Riskin made these requests.) *Id.* On July 6, 2017, HCBID Executive
Director Blair Besten told Mr. Riskin that the material from the two February requests was ready
for inspection and that the material from the June request would be ready by August 1, 2017. *Id.*

1 The HCBID hired Jeff Briggs to represent them with respect to CPRA requests some time
2 prior to October 10, 2017. *Id.* at ¶ 10. Since that time he has failed to supply Mr. Riskin with all
3 the records responsive to the February requests. *Id.* This is despite the fact that his client
4 informed Mr. Riskin more than six months ago that the material was ready. *Id.* With respect to
5 the June request, he has refused even to make a response that's compliant with the CPRA in that
6 he has not told Mr. Riskin whether or not there are responsive records, which exemptions might
7 apply, or when the material might be ready for production. *Id.* He does not even seem to have
8 made or instructed his client to make an adequate search for and review of these records. *Id.*

9 This is suggested by the fact that he does not know how many responsive records there
10 are. His only statement on the matter is that there more than 250 and fewer than 1000. *Id.* If an
11 adequate search and review had been done he would know the exact number of records. In
12 December 2017, Briggs supplied Mr. Riskin with some very few records which he claimed were
13 responsive to the June request. *Id.* Some of those were in fact responsive to other requests, while
14 others were not responsive to any request. *Id.*

15 Mr. Riskin made subsequent requests to the HCBID on October 26, 2017 ("October
16 request") and on November 2, 2017 ("November request"). *Id.* at ¶ 11. Mr. Briggs sent Mr.
17 Riskin a few records responsive to the October request but hasn't said if that's all of them, if any
18 exemptions were claimed, or when Mr. Riskin can expect his production to be complete. *Id.* He
19 has so far failed to respond at all to the November request. *Id.*

20 Mr. Briggs should not be rewarded for his failure to comply with the law.

21 CONCLUSION

22 Petitioner seeks the Court's order directing Respondent to 1) produce a log/index of
23 documents it identified in the most recent search (date, time, sender, recipient, subject), 2)
24 produce the documents it claims are exempt (excluding those it previously produced), or 3)
25 provide them to the Court for *in camera* review.

26 DATED: January 24, 2018

27 Respectfully Submitted,

28 LAW OFFICE OF COLLEEN FLYNN
Attorney for Petitioner

/s/ Colleen Flynn
COLLEEN FLYNN

1 **SUPPLEMENTAL DECLARATION OF COLLEEN FLYNN**

2
3 1. I am an attorney licensed to practice law in this state. I am the attorney for the Petitioner,
4 Adrian Riskin.

5 2. Attached hereto as **Exhibit A** are true and correct excerpts of the Reporter's Transcript of
6 Proceedings, November 28, 2017.

7
8 3. After the hearing on November 28, 2017, I called Jeff Briggs to offer to send him all the
9 files he had produced to Mr. Riskin in 2016. At the hearing, Mr. Briggs had informed the Court
10 he did not know if he still had those files. I offered to send them to him so he could do the review
11 and comparison between the results of the 2016 search and the search the Media District BID said
12 they did just before the November 28, 2017 hearing, as ordered by the Court. Mr. Briggs
13 confirmed he would like me to send the files from the original search but not right away due to
14 computer issues he was dealing with. On December 4, 2017, I sent him a link to a DropBox file
15 with the documents. Attached hereto as **Exhibit B** is a true and correct copy of my December 4,
16 2017 email to Mr. Briggs.

17
18 4. After I read Respondent's Report and Exemption Log; Declaration of Jeffrey Briggs,
19 which he served on January 11, 2018, I was concerned that the Media District BID had still not
20 conducted and adequate search/review and had not produced all non-exempt responsive records.
21 On January 18, 2018, I sent Mr. Briggs an email asking him to send me a list of the emails the
22 Media District BID located in the late-2017 search. I clarified I was only asking for
23 date/time/sender/recipient/subject, not the body of the emails, so that Mr. Riskin could do his
24 own comparison. I let him know that I understood it should only take a few minutes to generate
25 the list in Outlook. When I did not hear back from Mr. Briggs for a few day I emailed him again
26 on January 22, 2018. On January 23rd he wrote back, "Out of town. We already have done all
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1 asked by court per your own notice of ruling," effectively denying my request. I replied on
2 January 23rd, providing a more detailed explanation of why I was requesting the list/index. Mr.
3 Briggs has not responded to my last email. Attached hereto as **Exhibit C** is a true and correct
4 copy of my January 18-23, 2018 correspondence with Mr. Briggs.
5

6 Executed on January 24, 2018, in Los Angeles, California. I declare under penalty of
7 perjury that the foregoing is true and correct.

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10 COLLEEN FLYNN
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